STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2085

Public Housing Agency of the City of Saint Paul,
Appellant,

vs.

Richard Kevin Edwards,
Respondent.

Filed September 14, 2010
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-HG-CV-09-1448

Gerald T. Hendrickson, St. Paul City Attorney, Laura Pietan, Assistant City Attorney, St. Paul, Minnesota (for appellant)

Paul R. Birnberg, HOME Line, Minneapolis, Minnesota (for respondent)

Carol A. Kubic, Elizabeth J. Kragness, Minneapolis Public Housing Authority, Minneapolis, Minnesota; and

Lisa L. Walker, Housing and Development Law Institute, Washington, D.C. (for amici curiae Minneapolis Public Housing Authority and Housing and Development Law Institute)

Considered and decided by Peterson, Presiding Judge; Toussaint, Chief Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant claims that the district court erred by denying its eviction complaint and request for a "writ of restitution" restoring appellant to immediate possession of its property. By notice of review, respondent claims that the district court erred by denying his motion to suppress evidence that was obtained during an illegal search of his person and admitted against him at the eviction trial. Because appellant failed to prove that respondent breached the terms of his lease, appellant was not entitled to relief. We affirm on this ground without addressing appellant's remaining assignments of error or the issues presented in respondent's cross-appeal.

FACTS

On October 7, 2008, respondent Richard Kevin Edwards entered into a public-housing lease agreement with appellant Public Housing Agency of the City of Saint Paul (PHA). On February 26, 2009, Edwards was visiting M.E. at her apartment, which was located in another public-housing complex that was also owned by PHA. That day, police officers visited M.E.'s apartment to investigate a report that unauthorized persons were residing in her unit. During their visit, the officers pat-frisked Edwards and found two packets of "dried plant material" in his pockets. Subsequent testing revealed that the packets contained marijuana and that the marijuana weighed .89 and .82 grams respectively. Edwards was charged with possession or sale of a small amount of marijuana under Minn. Stat. § 152.027, subd. 4(b) (2008) (providing that certain repeated

violations of section 152.027, subd. 4(a) (2008) constitute a misdemeanor-level offense). The state subsequently dismissed the charge.

PHA initiated an eviction action against Edwards, asserting that he had violated the terms of his lease that prohibited criminal activity and drug-related criminal activity. PHA alleged that Edwards breached the following lease terms:

> 7. OBLIGATIONS OF TENANTS, MEMBERS OF HOUSEHOLD AND GUESTS
>
> . . . .
>
> B. The Tenant shall not:
>
> . . . .
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> 5. Engage in, or allow members of the household, guests or another person under Tenant's control to engage in any criminal activity, including drug-related criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the public housing premises by other tenants or employees of the Management.
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> . . . .
>
> 10. Engage in, or allow members of the household, guests or another person under the Tenant's control to engage in, any activity, including criminal activity, which impairs the physical or social environment of the premises, the neighborhood, or the development.
>
> 9. TERMINATION OF THE LEASE
>
> A. Management will not terminate or refuse to renew the Lease and will not evict Tenant from the dwelling unit except for serious or repeated violation of material terms of the Lease or other good cause. Serious violation of the Lease includes but is not limited to:
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> . . . .
>
> 4. Any activity, not just criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants and public housing employees, or drug-related and/or criminal activity on or off the premises, not just on or near the premises, or alcohol abuse that Management decides interferes with the health, safety, or right to peaceful enjoyment of the premises by other tenants or neighbors, when such activity has been engaged in by a Tenant, a member of the Tenant's household, a guest or

> another person under Tenant's control while the Tenant is a Tenant in public housing.

PHA also asserted that Edwards's arrest for possession of an illegal substance with the intent to sell was a serious violation of the material terms of his lease.

Edwards moved to suppress the marijuana that was recovered during his search, claiming that the search was illegal and that the evidence must be suppressed under Minn. Stat. § 626.21 (2008)[1] and the exclusionary rule.[2] The district court held an evidentiary hearing on the motion to suppress and concluded that the search was unconstitutional. But it also concluded that Minn. Stat. § 626.21 and the exclusionary rule do not apply in civil cases. The district court therefore denied Edwards's motion to suppress and ruled that the marijuana was admissible at Edwards's eviction trial.

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[1] The statute, in relevant part, provides that

> [a] person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the district court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized[] or (2) the property was illegally seized without warrant. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.

Minn. Stat. § 626.21.

[2] Evidence that is obtained by the exploitation of illegal actions by law enforcement must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417 (1963). "It is established that evidence discovered by exploiting previous illegal conduct is inadmissible." *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001) (citing *Wong Sun*, 371 U.S. at 488, 83 S. Ct. at 417), *review denied* (Minn. Dec. 11, 2001).

The district court later held a trial on PHA's eviction complaint and incorporated the evidence from the suppression hearing by reference. The district court ultimately denied PHA's request for relief and dismissed the eviction action after concluding that (1) PHA did not prove that Edwards breached the terms of his lease as alleged, (2) PHA could not enforce the provisions of its Admission and Occupancy Policies against Edwards because he was not given a copy of the policies and there was no proof that he had actual knowledge of the relevant provisions,[3] (3) PHA did not establish that Edwards's possession of a small amount of marijuana constituted a material breach of the lease,[4] and (4) federal law and regulations do not preempt chapter 504B of the Minnesota Statutes as to what constitutes a material breach. This appeal follows.

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[3] The district court relied on Minn. Stat. § 504B.115 (2008), which provides:

> Subdivision 1. Copy of written lease to tenant. Where there is a written lease, a landlord must give a copy to a tenant occupying a dwelling unit whose signature appears on the lease agreement. The landlord may obtain a signed and dated receipt, either as a separate document or an acknowledgment included in the lease agreement itself, from the tenant acknowledging that the tenant has received a copy of the lease. This signed receipt or acknowledgment is prima facie evidence that the tenant has received a copy of the lease.
>
> Subd. 2. Legal action to enforce lease. In any legal action to enforce a written lease, except for nonpayment of rent, disturbing the peace, malicious destruction of property, or a violation of section 504B.171, it is a defense for the tenant to prove that the landlord failed to comply with subdivision 1. This defense may be overcome if the landlord proves that the tenant had actual knowledge of the term or terms of the lease upon which any legal action is based.

[4] The district court reasoned that Minn. Stat. § 504B.171 (2008) "sets the standard of what is a material breach." The statute states that in every lease of residential premises, the landlord and tenant covenant that neither will "unlawfully allow controlled substances

D E C I S I O N

On review of a district court judgment in an eviction action, we defer to the district court's credibility determinations and uphold its factual findings unless they are clearly erroneous. *See* Minn. R. Civ. P. 52.01; *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003) (stating standard of review in an eviction action). "When a lease empowers a landlord to evict for certain actions, then the [district] court shall determine de novo whether the facts alleged in the complaint are true and whether those facts, under the terms of the lease support termination of the lease and eviction." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999).

A landlord may recover possession of property in an eviction action when a tenant "holds over . . . contrary to the conditions or covenants of the lease." Minn. Stat. § 504B.285, subd. 1(2) (Supp. 2009). A landlord's right to evict "is complete upon a tenant's violation of a lease condition." *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 556 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986). A lease is a form of contract, and its unambiguous language "must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Lor*, 591 N.W.2d at 704 (footnotes omitted).

In denying PHA's request for relief, the district court found that the police recovered two packets of dried plant material from Edwards's pockets during a search that occurred at a public-housing complex. But it was not the public-housing complex

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in those premises or in the common area and curtilage of the premises." Minn. Stat. § 504B.171, subd. 1(1)(i).

where Edwards resides. Chemical testing revealed that the substance was "the genus *Cannabis*" (i.e., marijuana) and the weight of the substance in the packets was 0.89 and 0.82 grams, respectively. The district court further found that Edwards purchased the packets believing them to contain marijuana and that he planned to use the marijuana; that Edwards's possession was solely for personal use and that there was no evidence of a sale, intent to sell, or intent to distribute the substance to any third party; and that there was no evidence that Edwards possessed the marijuana in his own apartment, in the common areas of his building, or in the curtilage of his apartment or building. PHA does not challenge these findings on appeal.

The district court concluded that Edwards possessed marijuana in violation of Minn. Stat. § 152.027, subd. 4(a) (prohibiting possession of a small amount of marijuana, defined as 42.5 grams or less under Minn. Stat. § 152.01, subd. 16 (2008)). But the district court also concluded that PHA failed to prove that Edwards "committed any crime or engaged in drug-related criminal activity." The district court reasoned that possession of a small amount of marijuana is a petty-misdemeanor level offense under Minn. Stat. § 152.027, subd. 4(a), and that "[a] petty misdemeanor is not a crime" under Minn. Stat. § 609.02, subds. 1, 4a (2008) (defining "crime" as "conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment" and defining a "petty misdemeanor" as a "petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine . . . may be imposed").

PHA contends that the district court erred by ignoring "the explicit definition of 'drug related criminal activity' in the lease, which contemplates the possession of a

controlled substance without regard to Minnesota's penal statutes." PHA claims that Edwards's possession of marijuana constitutes "criminal activity" and "drug-related criminal activity" as those terms are defined in the parties' lease agreement. PHA argues that the terms "criminal activity" and "drug-related criminal activity" are defined in PHA's Admission and Occupancy Policies and that these policies are incorporated into the lease by reference under paragraph 14, which provides:

> 14. ADMISSION AND OCCUPANCY POLICIES
>
> The Admission and Occupancy Policies referred to in this Lease is the Admission and Occupancy Policies as approved and as amended by the PHA's Board of Commissioners and is made a part of this Lease by reference. A copy of the Admission and Occupancy Policies and amendments is posted in the Management Office and may be examined at any time during business hours.

See Buchman Plumbing Co. v. Regents of the Univ. of Minn., 298 Minn. 328, 338, 215 N.W.2d 479, 485 (1974) ("Where . . . plans and specifications are by express terms made a part of [a] contract, the terms of the plans and specifications will control with the same force as though physically incorporated in the very contract itself." (quotation omitted)).

Even though PHA relies on the Admission and Occupancy Policies to establish the definitions that demonstrate the alleged lease violation, it did not introduce a copy of the Admission and Occupancy Policies into evidence at the eviction trial. Instead, PHA relied on exhibit six, which states:

> Appendix A-4: 13. Criminal Activity: Criminal activity includes, but is not limited to, intentional conduct that is forbidden by and punishable under Minnesota law, even though such conduct may be neither reported to a law enforcement agency nor prosecuted. Such conduct includes, but is not limited to, acts of physical violence or the threat of

> such acts. Neither proof beyond a reasonable doubt nor conviction in a court of law is necessary to establish violation of the terms of the Dwelling Lease.
> Appendix A-4: 21. Drug-Related Criminal Activity: The term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as such term is defined in Section 102 of the Controlled. [sic]

But exhibit six is not a copy of the Admissions and Occupancy Policy itself. Exhibit six is a multipage document consisting of (1) the termination of tenancy notice that PHA provided to Edwards, (2) an attachment setting forth the lease clauses and Admission and Occupancy Policies that Edwards allegedly violated, (3) a one-page document describing the conduct underlying the alleged violations, and (4) an affidavit of service.

PHA also presented testimony regarding the relevant Admission and Occupancy Policies definitions. B.J., a PHA manager who is responsible for the property where Edwards resides, was asked to describe "drug-related criminal activity" as that term is used in the lease. B.J. testified: "Drug-related criminal activity related to the leases says: The drug—the term 'drug-related criminal activity' means the illegal manufacture, sale, distribution, use or possession." PHA's counsel then asked, "what does the lease say as far as—or excuse me, the termination letter say as far as how it defines what criminal activity is?" B.J. answered: "The lease defines that criminal activity is activity forbidden by and punishable under the Minnesota—Minnesota state law," and that "[t]he lease says neither proof beyond a reasonable doubt nor conviction in a court is necessary." When asked whether the definition of criminal activity was incorporated into the lease that

Edwards signed, B.J. stated "[y]es, it is," and she cited paragraphs seven and nine of the lease, which actually set forth the tenant's obligations and the grounds for termination. During cross-examination, Edwards's attorney asked B.J. to confirm that "criminal activity" and "drug-related criminal activity" are actually defined in the lease. B.J. clarified that "[t]hose definitions [are] in our occupancy and admission policies" and that paragraph 14 of the lease incorporates those definitions into the lease.

Despite this evidence, the district court found that PHA did not prove the definitions of "criminal activity" and "drug-related criminal activity" that are allegedly set forth in the Admission and Occupancy Policies. The district court emphasized PHA's failure to offer the Admission and Occupancy Policies into evidence. The district court noted that "[t]he Admission[] and Occupancy Policies were not introduced into evidence" and that "[t]he lease itself does not define 'drug-related criminal activity.' It does refer to Admission and Occupancy Policies but the Admission and Occupancy Policies were not introduced into evidence." And the district court described the testimony regarding the policies as providing an "incomplete definition" that "does not help establish that [Edwards] engaged [in] 'drug-related criminal activity.'"

The district court's decision is based on a failure of proof. The district court correctly concluded that the definition of "drug-related criminal activity" contained in exhibit six is incomplete, references an "unidentified list," and "leaves the reader in the same position as without the incomplete definition." The definition in exhibit six indicates that activity involving *certain* controlled substances is prohibited, and identifies the relevant controlled substances as "a controlled substance (as such term is defined in

Section 102 of the Controlled." PHA concedes that "the definition as it was written in the termination notice [i.e., exhibit six] . . . contained a typographical error. It did not include the remainder of the last sentence. . . ." PHA advises this court that the relevant portion of the definition, as contained in the Admissions and Occupancy Policies, actually states: "a controlled substance (as such term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802)." PHA asserts that this "small error in typing" is insignificant. We disagree—the omitted text identifies the types of controlled substances that satisfy the definition of "drug-related criminal activity." This is not a *di minimus* omission.

Instead of offering the Admissions and Occupancy Policies for the district court's consideration, PHA offered an incomplete version of the relevant definitions and what can fairly be described as limited, vague, and confusing testimony regarding the definitions. The district court did not credit this evidence, and we defer to this credibility determination. *See* Minn. R. Civ. P. 52.01. PHA cannot complain that the district court failed to define "criminal activity" and "drug-related criminal activity" as PHA requests when it failed to provide the court with supporting evidence. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("[A] party cannot complain about a district court's failure to rule in [the party's] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003). And while there is merit to PHA's argument that Congress intends to eradicate drug-related and criminal activity in public-housing complexes and has mandated certain

lease language to achieve this goal,[5] a landlord must still prove its case at an eviction trial. Given the evidentiary record in this case, the district court did not clearly err by finding that PHA failed to prove the definitions of "criminal activity" and "drug-related criminal activity" on which it relies. *See Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) ("Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." (quotation omitted)).

Because PHA failed to prove the definitions on which it relies to establish a breach of paragraphs 7.B.5, 7.B.10, and 9.A.4 of the lease, the district court did not err by concluding that PHA did not demonstrate that Edwards breached these lease terms. We

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[5] Congress has found that

> (1) the Federal Government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs;
> (2) public and other federally assisted low-income housing in many areas suffers from rampant drug-related or violent crime;
> (3) drug dealers are increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants; [and]
> (4) the increase in drug-related and violent crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures.

42 U.S.C. § 11901 (2006). Consistent with these findings, federal law mandates the inclusion of language in public-housing leases stating that "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant . . . shall be cause for termination of tenancy." 42 U.S.C. § 1437d(*l*)(6) (2006).

therefore affirm on this ground, making it unnecessary to address the district court's other conclusions of law, which are premised on the finding of a breach. And because Edwards has suffered no prejudice, we do not reach the issues presented in his cross-appeal. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that in order to prevail on appeal, an appellant must show both error and prejudice resulting from the error); *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993) (stating that the appellant bears the burden of demonstrating that error is prejudicial), *review denied* (Minn. June 28, 1993).

Affirmed.

Dated:

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Judge Michelle A. Larkin